1942

File No. Local Bds II/42

Legal DEPARTMENT

B BRANCH

P. 2(16) 1942

Subject:—

Rules and Notifications
under the
Bombay Local Boards Act,
1923

File No. Local Bds II/42

Std. Scott Slip 24-B

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" True copy - Original papers being of bad quality- Destroyed".

Sd. x x x
Superintendent,
D Branch, Legal Department.

Office of the R.L.A.

A revised draft notification is sent herewith.

Sd. P.N.M.
6-3-

Remembrancer of Legal Affairs.

U.R. to G.D. No.2058, dated the 7th March 1942.

NOTIFICATION.

General Department,
Bombay, Castle, 1942.

No. S.128(3).-- The following draft of a notification which it is proposed to issue in exercise of the powers conferred by clause (h) of Section 133 of the Bombay Local Boards Act, 1923 (Bom. VI of 1923) is published as required by the proviso to the said section 133, for the information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration by the Government of Bombay on or after .....1942.

2. Any objection or suggestion which may be received by the Secretary to the Government, General Department, from any person with respect to the said draft on or before the date aforesaid will be considered by Government.

DRAFT NOTIFICATION.

In exercise of the powers conferred by clause (h) of section 133 of the Bombay Local Boards Act, 1923 (Bombay VI of 1923) the Government of Bombay is pleased to make the following rules for the guidance of the district local boards as regards the grant of leave to members of the work-charged establishment employed by the district local boards, namely:-

1. Subject to the provisions of the following rules, a member of a work-charged establishment employed by a district local board on regular work from year to year may be granted leave for a period not exceeding 1/22nd of the period of continuous duty performed by him and not exceeding one month

at a time.

2. If no substitute is appointed during the period of the leave granted to any member under rule 1 he shall be paid during the said period allowance at the rate of the pay payable to him on the date immediately preceding the date on which the period of the leave commences; and if a substitute is appointed, he shall be paid, during the said period, allowance at a rate equivalent to the amount of the excess if any, of the pay payable to him on the date immediately preceding the date on which the period of leave commences, over the pay of the substitute.

3. Except for special reasons to be recorded in writing leave shall not be granted to any member unless--

(i) He has served continuously for at least 22 months;

(ii) His services are likely to be required for a period of not less than six months after the expiry of the period of the leave; and

(iii) He signs an agreement to the effect that he will serve on the work-charged establishment, should his services be required by the district local board for a period of not less than six months after the expiry of the period of his leave, and that on his failure to do so he shall refund the amount of the allowance paid to him during the period of his leave.

4. No leave account of any member shall be maintained. The leave due at any time to any member shall be calculated only on the period of the continuous duty performed by such member upto the date on whichthe leave is to

granted to him. In case the ...
by any member is interrupted on any day ...
shall forfeit all claimed to leave earned upto
that day.

By order of the Governor of Bomba

Secretary to Government.

The first question referred to the R.L.A. for consideration is whether it can be held that 'piece work' is not 'contract work' and if so whether the amendment proposed by the Examiner in rule 129 of the Local Board Account Code in the form shown at P.49 ante is in order. It is true that according to the classification of works referred to in paragraph 2 of the Examiner, Local Fund Accounts' letter at pp.31-32 ante which is based on paragraph 188 of the Bombay P.W.D. Manual Vol. I, 'piece work' is not 'contract work'. But this classification is only meant for administrative purposes and does not affect the legal position set out in R.L.A.'s opinion No.3712, dated 26th April 1941. When a tender is made and accepted, it constitutes in law a contract. Under rule 129 of the Bombay Local Boards Account Code, 1935, the tender has to be in form No.45 appended to the Code. This form states - "I hereby agree subject to the conditions mentioned below, to undertake the several items specified below for ..... per cent. less than the estimated rates shown against each". There are three conditions specified in this form the first of which says "I shall execute the work very satisfactorily and expeditiously by using the best materials". A tender in this form is in the nature of a proposal and when it is accepted it would be a contract in law (see section 2(h) of the Indian Contract Act, 1872). In order that such a contract may be valid in law, it is necessary that it should be executed in the manner provided in section 42 of the Bombay Local Boards Act, 1923. Under sub-section (1) of this section the President of a District Local Board can alone execute a contract when the amount or value of the contract does not exceed Rs.500/- and under sub-section (2) the President and two other members have to execute the contract when the amount or value exceeds Rs.500/-. Sub-section (3) expressly provides that no contract which is not executed as in this section provided shall be binding on a local board. Unless therefore, the tender in form No.45 is accepted by the President, District Local Board, when the amount or value does not exceed Rs.500/- and by the President and two other

members of the Board in other cases, the contract embodying the terms of the tender will have no legal validity. It is not competent in law to the Engineer of the District Local Board to enter into such contracts, nor therefore to accept the tenders. The provision in the form No.45 providing for acceptance of the tender by the Engineer, District Local Board is ultra vires and will have to be deleted. The amendment suggested by the Examiner, Local Fund Accounts which empowers the Engineer to sanction the tenders is, for the same reasons, ultra vires and cannot be accepted.

2. The second question referred to the R.L.A. for opinion is whether the amendment suggested to rule 121 of the Bombay Local Boards Account Code, as at p.8 ante is in order. The amendment is free from legal objection. From the drafting point of view it may be recast as under:

"The Board or any authority to which the Board has delegated its powers in accordance with the provisions of the Act and the rules thereunder, may, after consulting the Board's Engineer, decide which particular system should be adopted in carrying out any work".

Sd. P.N.M.
25-9-

Remembrancer of Legal Affairs.

U.R. to G.D. No.7909 dated the 29th September 1942.

Submitted before issue.

u.o. 26/9.

S.S. 26/9.

P.A.

D.S.

Office of the H.L.A.

A revised draft notification is sent herewith.

2. Under sub-section (1) of section 42 of the Bombay Local Boards Act, 1923, the President of a district local board has power to enter into any contract or agreement on behalf of the board provided the amount or value of such contract or agreement does not exceed five hundreed rupees. Sub-section (2) of section 42 provides that every other contract or agreement on behalf of a local board shall be in writing and shall be signed by the President and by two other members of the Board. Under the proviso to rule 1 of the rules made by Government under clause (c) of section 133 of the Act, power has been given to the Board to delegate its power of entering into contracts the amount or value of which exceeds Rs.500/- but does not exceed Rs.2500/- to the Standing Committee of the Board. The position therefore is that in the case of contracts the amount or value of which does not exceed Rs.500/- the power to enter into contracts is with the President in the case of contracts the amount or value of which exceeds Rs.500/- but does not exceed Rs.2500/- the power to enter into contracts is with the standing Committee (where the Board has delegated the power to the Committee) and in all other cases the power to enter into contracts is with the Board. Provision has therefore been made in the revised Form No.45 giving the power to accept or cancel tenders to the President, the Standing Committee or the Board as the case may be.

3. In view of the proposed amendment of Form No.45, it is necessary to amend rule 129 as proposed by G.D. It may be pointed out that in the revised Form the power to inspect and approve the work done and materials used is retained with the Engineer as that officer would appear to be the proper authority in whom such power should be lodged.

Sd. P.N.M.
19-11

Remembrancer of Legal Affairs.

u.r. to G.D.No.9358
dated 20th November 1942.